

2009 DRAFTING REQUEST

Bill

Received: **12/15/2008**

Received By: **chanaman**

Wanted: **As time permits**

Identical to LRB:

For: **Lena Taylor (608) 266-5810**

By/Representing: **Anne Eichmeyer**

This file may be shown to any legislator: **NO**

Drafter: **chanaman**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - crimes agnst kids**
Criminal Law - procedure

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Taylor@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Defense to death or harm to child arising from failure to provide medical care

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	chanaman 12/16/2008	bkraft 01/05/2009		_____			S&L
/1	chanaman 10/01/2009	bkraft 10/01/2009	phenry 01/06/2009	_____	mbarman 01/06/2009		S&L
/2			jfrantze 10/01/2009	_____	cduerst 10/01/2009	sbasford 10/26/2009	

FE Sent For:

at
intro

<END>

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12 bjk 10/1

[Signature]
10/1

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/?	chanaman	/1 bjk 12/26					

FE Sent For:

<END>

Hanaman, Cathlene

From: Eichmeyer, Anne
Sent: Tuesday, December 02, 2008 3:53 PM
To: Hanaman, Cathlene
Cc: Peterson, Eric
Subject: Draft Request

Attachments: Draft Request- Christian Science Committee.doc

Hello Ms. Hanaman,
I am an intern working with Senator Taylor. I have attached a request for an amendment that the office would like drafted.
Thank you,
Anne Eichmeyer



Draft Request-
Christian Scien...

aug.03

REQUEST FOR AMENDMENT

1. **Add** a new subsection to 491 to Chapter 939 (within the subchapter relating to Defenses to Criminal Liability) that reads:

"§ 939.491. Reasonable use of treatment by spiritual means for healing.

- (1) It is an affirmative defense to any prosecution arising from the death, bodily harm, or great bodily harm of a child attributable to a failure to provide medical care that the provision of treatment by spiritual means in lieu of medical care was reasonable under the circumstances.
- (2) The following factors shall be relevant for purposes of evaluating reasonableness under subsection (1) of this section:
 - (a) The age, maturity, and capacity of the child;
 - (b) The condition for which the child was being treated;
 - (c) Whether the child exhibited clear symptoms of a condition that is life-threatening or would result in serious disability;
 - (d) The length of time during which the child experienced the condition;
 - (e) The likelihood that medical treatment would have succeeded in remedying the child's condition including consideration of the risks of harm or negative side effects associated with undergoing medical treatment and the risks of harm from failure to provide medical treatment;
 - (f) The past experience of the family in relying upon medical treatment; and
 - (g) The past experience of the family in relying upon spiritual treatment."; and

2. **Delete** the subsection (6) of Wis. Stat. Ann. § 939.491 (relating to the crime of Physical Abuse of a child) in its entirety.

448.03(6)
48.941(3)(c)4.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1147#

CMH:.....

Lbjk

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

LPS - Statute sections
are out of order.
Please sort.

SAV
X-ref ✓

① AN ACT ^{general} relating to: privilege defense to criminal prosecutions for use of
② nonmedical treatment in lieu of medical treatment on a child.

spiritual

Analysis by the Legislative Reference Bureau

- Under current law, a person is not guilty of the crime of physical abuse of a child
- > solely because the person provides a child with nonmedical treatment by spiritual means instead of medical or surgical treatment. This bill creates a general
 - > affirmative defense for a person who reasonably uses, on another person under the age of 18, spiritual treatment instead of medical treatment.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 948.03 (6) of the statutes is repealed.

4 SECTION 2. 939.45 (5m) of the statutes is created to read:

- ⑤ ^{NOT BOLD} **939.45(5m)** (a) When the actor's conduct is in good faith and is a reasonable
⑥ use of spiritual, prayer, or religious treatment in lieu of medical treatment for an
7 individual who has not attained the age of 18 years.

for a condition

(b) The following factors are relevant in determining whether the use of spiritual, prayer, or religious treatment in lieu of medical treatment was reasonable for purposes of par. (a):

1. The age and mental capacity of the individual under 18. *the age of*
2. The health condition for which the individual under 18 was being treated by spiritual, prayer, or religious treatment. *the age of*
3. Whether the individual under 18 exhibited symptoms that would be, or should have been, recognized by the actor as symptoms of a life-threatening condition or of a condition that would result in great bodily harm.
4. The length of time that ~~that~~ *the* individual under 18 had the ~~condition~~ *the age of* or the symptoms.
5. The likelihood that medical treatment would have eliminated the health condition.
6. Any risk of harm ~~and~~ *or* negative side effects of medical treatment for the condition.
7. Any risk of harm from failure to provide medical treatment. *for the condition*
8. The experience of the family in relying upon medical treatment.
9. The experience of the family in relying upon spiritual, prayer, or religious treatment.

(END)

of the individual under the age of 18

SECTION 1. 948.03 (6) of the statutes is repealed.

SECTION 2. 939.45 (5m) of the statutes is created to read:

939.45 (5m) (a) When the parent or guardian's conduct is in good faith and is a reasonable use of spiritual, prayer, or religious treatment in lieu of medical treatment for a condition for an individual who has not attained the age of 18 years.

(b) The following factors are relevant in determining whether the use of spiritual, prayer, or religious treatment in lieu of medical treatment was reasonable for purposes of par. (a):

1. The age and mental capacity of the individual under the age of 18.
2. The health condition for which the individual under the age of 18 was being treated by spiritual, prayer, or religious treatment.
3. Whether the individual under the age of 18 exhibited symptoms that would be, or should have been, recognized by the actor as symptoms of a life-threatening condition or of a condition that would result in great bodily harm.
4. The length of time that the individual under the age of 18 had the condition or the symptoms.
5. The likelihood that medical treatment would have eliminated the condition.
6. Any risk of harm or negative side effects of medical treatment for the condition.
7. Any risk of harm from failure to provide medical treatment for the condition.
8. The experience of the family of the individual under the age of 18 in relying upon medical treatment.
9. The experience of the family of the individual under the age of 18 in relying upon spiritual, prayer, or religious treatment.

SECTION 3. 448.03 (6) of the statutes is amended to read:

448.03 (6) PRACTICE OF CHRISTIAN SCIENCE. No law of this state regulating the practice of medicine and surgery may be construed to interfere with the practice of Christian Science. A person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment, **except where such treatment is otherwise required under the laws of this state, including, but not limited to, the State's authority to take custody of and provide immediate medical treatment to a child pursuant to Wis. Stat. §§ 48.19(1)(d)5. and 48.20(4).**



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-1147/pe
CMH/bjk:ph stays
(2)
CTS

2009 BILL

SA xref
Inserts
and the election of Christian Science treatment for a child in lieu of medical or surgical treatment for the cure of disease

1 AN ACT ^{repeal} to repeal 948.03 (6); and to create 939.45 (5m) of the statutes; relating
2 to: defense to criminal prosecutions for ^{for a parent or guardian} use of spiritual treatment in lieu of
medical treatment on a child ^{using}

parent or guardian of an individual under the age of 18
Analysis by the Legislative Reference Bureau

INS A
INS 1-4
Under current law, a person is not guilty of the crime of physical abuse of a child solely because the person provides a child with treatment by spiritual means instead of medical or surgical treatment. This bill creates a general affirmative defense for a person who reasonably uses, on another person who is under the age of 18, spiritual treatment instead of medical treatment. ^{the individual}

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 SECTION 1. 939.45 (5m) of the statutes is created to read:

5 939.45 (5m) (a) When the actor's conduct is in good faith and is a reasonable
6 use of spiritual, prayer, or religious treatment in lieu of medical treatment for a
7 condition for an individual who has not attained the age of 18 years,

INS 1-7

BILL

(b) The following factors are relevant in determining whether the use of spiritual, prayer, or religious treatment in lieu of medical treatment was reasonable for purposes of par. (a):

1. The age and mental capacity of the individual under the age of 18.

2. The health condition for which the individual under the age of 18 was being treated by spiritual, prayer, or religious treatment.

3. Whether the individual under the age of 18 exhibited symptoms that would be, or should have been, recognized by the actor as symptoms of a life-threatening condition or of a condition that would result in great bodily harm.

4. The length of time that the individual under the age of 18 had the condition or the symptoms.

5. The likelihood that medical treatment would have eliminated the condition.

6. Any risk of harm or negative side effects of medical treatment for the condition.

7. Any risk of harm from failure to provide medical treatment for the condition.

8. The experience of the family of the individual under the age of 18 in relying upon medical treatment.

9. The experience of the family of the individual under the age of 18 in relying upon spiritual, prayer, or religious treatment.

SECTION 2. 948.03 (6) of the statutes is repealed.

(END)

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1147/2ins
CTS:.....

1 Insert A:

Also under current law, a person who elects Christian Science treatment in lieu of medical or surgical treatment for the cure of disease may not be compelled to submit to medical or surgical treatment. The bill specifies that this prohibition does not apply where medical or surgical treatment of a child is required under current provisions that permit a child to be taken into custody if the child is suffering from illness or injury or is in immediate danger from his or her surroundings, or to be taken to a hospital or a physician if the child is believed to be suffering from a serious physical condition which requires either prompt diagnosis or prompt treatment, or if medical or surgical treatment is otherwise required by law.

2 Insert 1-4:

3 SECTION 1. 448.03 (6) of the statutes is amended to read:

4 448.03 (6) PRACTICE OF CHRISTIAN SCIENCE. No law of this state regulating the
5 practice of medicine and surgery may be construed to interfere with the practice of
6 Christian Science. A person who elects Christian Science treatment in lieu of
7 medical or surgical treatment for the cure of disease may not be compelled to submit
8 to medical or surgical treatment, unless medical or surgical treatment of a child is
9 required under s. 48.19 (1) (d) 5. or 48.20 (4), or is otherwise required by law.

History: 1975 c. 383, 421; 1977 c. 164; 1979 c. 317; 1985 a. 29; 1987 a. 40, 399; 1989 a. 31, 229; 1991 a. 23; 1993 a. 105, 107, 490; 1995 a. 27, 201; 1997 a. 67, 175, 311; 1999 a. 32, 180; 2001 a. 89; 2005 a. 96, 292; 2007 a. 97.

**2009-2010 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1147/2ins
CMH:.....

ch

1 Insert 1-7

2 ^{N^o} When the actor is a parent or guardian of an individual who has not attained
3 the age of 18 years and the actor's conduct is in good faith and is a reasonable use
4 of spiritual, prayer, or religious treatment in lieu of medical treatment for a condition
5 for the individual.

Basford, Sarah

From: Peterson, Eric
Sent: Sunday, October 25, 2009 1:08 PM
To: LRB.Legal
Subject: Draft Review: LRB 09-1147/2 Topic: Defense to death or harm to child arising from failure to provide medical care

Please Jacket LRB 09-1147/2 for the SENATE.